IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 26 OF 2004.

Jagdish Chandra Sybramanyan,
presently residing at
P.O. 104, 5th Cross,
Indira Nagar, Iind Stage,
Bangalore, Karnataka. ..... Appellant.

VERSUS

State of Goa,
as represented by the
Officer-In-Charge,
ANC Police Station,
Panaji, Goa. ..... Respondent.

Ms. C. Collasso, Advocate for the Appellant.

Mr. S.N.. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 03.09.2004
DATE OF PROUNCING THE JUDGMENT:10.09.2004

J U D G M E N T:

The appellant herein is the accused in Special Criminal Case No. 25/2000. By Judgment dated 7.6.2004 the learned Special Judge, Narcotic Drugs and Psychotropic Substances Court, Mapusa, has convicted the accused under Section 20(b)(i) of the N.D.P.S. Act, 1985 (Act, for short) and by Order dated 8.6.2004 has sentenced him to undergo R.I. For a period of four months

and to pay a fine of Rs.20,000/-, in default to undergo S.I. for two months. The period of detention during the investigation has been ordered to be set off.

2. The accused has challenged the said conviction and sentence imposed upon him by the learned Special Judge in this appeal.

3. The case of the prosecution was that on 14.2.2000 at about 15.30 hrs. P.S.I. Prabhu Dessai attached to the Anti Narcotic Cell, Panaji received specific and reliable information that a person from Karnataka, about 25 years of age, thin built, tall, with a small beard carrying a haversack would come to the Calangute beach near the Tourist Hostel to deliver a consignment of ganja at about 17.30 hrs to 18.00 hrs. which information he reduced in writing and copy of the same was handed over to the Dy.S.P. Shri Thorat for information and thereafter after securing the presence of two panch witnesses, .P.S.I. Prabhu Dessai along with the police party proceeded to Calangute near Tourist Hostel at about 17.00 hrs. and reached there at about 17.30 hrs. when they saw a person of the said description coming from Baga and then all surrounded him and on being asked, he gave his name as Jagdish Chandra s/o Subramanyam, native of Bangalore, Karnataka, and thereafter the accused was told that he had a right to be searched either before a Gazetted Officer or a Magistrate and so also the members of the raiding party, and, after the accused declined the said offer, a search was carried out of the said haversack in which some clothes and a greenish colour bag containing greenish colour leafy substance, which on smell, was suspected to be ganja was found and it was then sealed after following necessary procedure.

4. The case of the accused was one of false implication. The prosecution examined in support of the charge, six witnesses including Dy.S.P. Shri Thorat, who had supervised the said raid.

5. The learned Special Judge after having elaborately discussed the evidence of the prosecution, came to the conclusion that the prosecution had proved its case beyond all reasonable doubt against the accused and therefore convicted and sentenced the accused, as aforesaid.

6. At the time of hearing of the arguments in this appeal, Ms. Collasso, the learned counsel of the accused, has submitted that the sealing of the samples in this case has been faulty and that in the circumstnces in which the sample was sealed, the tampering of the same could not be ruled out. Ms. Collasso ha submitted that what was received by P.W.1 Kaissare and analysed by him was not the sample which was seized from the possession of the accused. It is the submission of learned Advocate Ms. Collasso that although the prosecution claims that a label was affixed with gum to the said sample with the description of the article which was packed, prosecution ought to have placed a seal partly on the said label and partly on the cloth in which the sample was packed. Learned Advocate Ms. Collasso has also submitted that P.W.5 P.I. Mamledar to whom the said sample was handed over for safe custody ought to have put his own seal on the said sample.

7. In my view, the submissions made regarding the possibility of the sample being tampered with, cannot at all be accepted. This aspect of the case has been sufficiently dealt with by the learned Special Judge. P.W.1 Shri Kaissare is the Junior Scientific Officer who examined the said sample. He has stated that on 15.2.2000 one sealed white cloth parcel tied with jute thread both vertically and across was received in his Laboratory and that the seals fixed on the parcel were intact individually covered with cellotape. Out of the four seals, the particulars of three seals were clearly legible and tallied with the specimen seal impression sent separately along with the forwarding letter. The particulars on the fourth seal which was at the bottom of the parcel was not clearly legible. He further stated that other particulars on the piece of paper pasted on the parcel were given by him in his report. According to him, the label was pasted by gum over the cloth and the jute string (sutli). He stated that there was no seal on the said paper label and the cloth. On this aspect P.W.5 P.I.Mamledar has stated that the seized property was handed over to him along with the letter bearing the specimen seal impression and that necessary entries were made by him in the muddemal register. He stated that P.S.I. Prabhu Dessai had also given to him the seal used for sealing the sample for safe custody. In cross-examination, he stated that he had not used his own seal held by him for the purpose of sealing the said sample but he had made an entry in the muddemal register. In further cross examination he had stated that the purpose of fixing the seal is to avoid tampering and whenever any substance is put in an envelope, the flap of the envelope is closed with gum and then the seal is affixed on the flap so that the flap or the envelope cannot be opened without breaking the seal. In my view, only because no seal

was placed partly on the paper label and partly on the cloth in which the sample was wrapped, did not affect the sanctity or integrity of the sealing process. Likewise, it was also not expected on the part of P.I. Mamledar that he should have affixed his own seal on the said sample as a token of having received the same. A sample is required to be properly packed, secured and sealed so that any tampering as regards the same is completely obliterated. There is no requirement of any rule or any uniformly followed practice which requires that when a paper label is affixed with gum, the same also needs to be sealed partly on the paper label and partly on the cloth or other material in which the sample is packed. Similarly ,there is no requirement of any rule or any uniformly followed practice by which the officer to whom the sample is given for safe custody is required to put his own seal. In fact, there cannot be only one particular manner of packing and sealing of seized articles in a given case. It always could be done in more ways than one. Only care is required to be taken to ensure that the sample which is packed, secured and sealed is sealed in such a way that there will be no scope for tampering by the time it reaches the Laboratory for analysis. In my view, in this case, from the manner the sample was sealed, leaves no room for doubt that it could have been tampered with before it had reached the Laboratory. I am therefore not inclined to accept the submission that the sealing process in this case has been faulty leaving scope for its tampering.

8. The second submission made on behalf of the accused is that there are serious anomalies in the material circumstances of the case of the prosecution and that the case of the prosecution appears to be highly improbable. This submission

is made with particular reference to the evidence of P.W.3 Shirodkar, the panch witness. It is submitted that P.W.3 Shirodkar was not present at the time of the alleged seizure of the sample from the accused. In my view this submission also appears to be misplaced. P.W.3 Shirodkar has given all possible details as to whatever transpired after he was called by one policeman and his version has not been anything different from the version given by the other witnesses examined by the prosecution, particularly P.W.4 P.S.I. Prabhu Dessai and P.W.6 the then Dy.S.P. Shri Thorat. P.W.3 Shirodkar stated that at the relevant time he was working as an Accountant at Mormugao Steel Ltd. at Curtorim and on that day he had come for some work at the U.T.I. Bank, Panaji which work could not be completed because the concerned officer was not available and this he had informed his immediate superior Shri Rodrigues. It certainly was not necessary for him to have told his office on the next day that thereafter he had acted as a panch witness in this case. Only because P.W.5 Shirodkar after he had finished with the panchanama left the place by bus and not in the company of the other raiding party was certainly not a ground to reject his evidence. Having delayed to reach home and in order to avoid further delay by accompanying the police party, he was bound to leave the place by the available bus. His evidence has been meticulously considered by the learned Special Judge and I find no good ground at all to doubt his testimony.

9. In my view, there are no anomalies at all in the evidence of the witnesses of the prosecution so as to make the case of the prosecution doubtful or improbable in any manner. In my view, the learned Special Judge was fully

justified, on the analysis of the evidence led by the prosecution, to come to the conclusion that the prosecution had proved its case beyond reasonable doubt.

10. As far as the procedure of Section 50 of the Act is concerned, P.S.I. Prabhu Dessai had told the accused that he had a right to be searched before a Gazetted Officer or Magistrate and that he had declined to exercise that right. As far as this aspect of the case is concerned, it has now been held by the Supreme Court in the case of **T.T. Haneefa v. State of Kerala (2004 A.I.R. SCW 3300)** that it is the option of the officer who conducts the search to choose any one of them i.e. either the Magistrate or the Gazetted Officer depending upon availability and the accused has no right of option. It has also been held in the case of **Madan Lal and another v. State of Himachal Pradesh (2003 Cri.L.J. 3868)** relied upon by Shri Sardessai, the learned P.P. That Section 50 of the Act applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises.

11. As far as the investigation being continued by P.S.I. Prabhu Dessai is concerned, it has been observed in the case of **Dharmu v. State of M.P. (2001 Drugs Cases 518)** that a Division Bench of this Court in the case of **B.J. Framous vs. State [(1992) Crimes 778]** has held that it is not possible to lay down any such broad proposition of law that in no case investigation should be done by the officer who effects the recovery. The same appears to have been the view held by the Delhi High Court and subsequently by the Rajasthan High Court in the case reported in **Chhoturam vs. State of Rajasthan (1995 Cri.L.J. 819)**. In this last

case, it has been held that the Act does not envisage the investigation by two separate persons – one upto the stage of arrest of the accused, search and seizure and thereafter by another officer. The Hon'ble Supreme Court in the case of **State v. V. Jayapaul (2004 A.I.R. SCW 1762)** has nowheld that the police officer who recorded the FIR regarding the suspected commission of certain cognizable offences by the respondent is competent to investigate the case and submit the final report to Court of special Judge and that there is nothing in the provisions of the Criminal Procedure Code which precludes the Inspector of Police, Vigilance from taking up the investigation. It has been held that bias or prejudice cannot be ipso facto inferred.

12.In view of the above, the conviction of the accused could not be faulted.

13.As far as the sentence is concerned, the learned Special Judge appears to have taken note of the fact that the accused was a first offender, had aged parents and had previously undergone treatment for de-addiction. An offence under Section 20(b)(i) is punishable with R.I. for a term which may extend to ten years and also fine which may extend to Rs. 1 lakh. The learned Special Judge, as already stated, has sentenced the accused to undergo R.I. for a period of four months and fine of Rs.20,000/-, in default to undergo two months S.I. It has now been submitted on behalf of the accused that the accused has a regular job and is married. However, I find that the said submission is as bald as it can be , as it is not supported by any material whatsoever either by way of marriage certificate or for that matter service certificate. In such a situation, I am not inclined to interfere with the sentence imposed upon the accused, by the

learned Special Judge.

14. Consequently, I find there is no merit in this appeal which is hereby dismissed. The accused to surrender before the learned Special Judge to undergo the sentence, within thirty days.

N. A. BRITTO, J.

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